

**STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA**

Revised Effective August 08, 2018

**POLICY NO. DI-02-2018
(B,SB,SL)
[Rescinds Policy No. DI-01-2018]**

**INVESTMENT POWERS OF STATE-CHARTERED FINANCIAL INSTITUTIONS
IN PUBLIC WELFARE INVESTMENTS**

- I. PURPOSE:** To clarify the Louisiana Banking Law (LBL) as it relates to the investment powers of state-chartered financial institutions in public welfare investments.
- II. APPLICABILITY:** This policy applies to state-chartered financial institutions including banks, savings and loan associations, and savings banks.
- III. GENERAL:** The following provision of the LBL, R.S. 6:241(B)(2), provides that Louisiana banks have, among their powers, the power:
"To receive, hold, purchase, acquire, and convey by and under its corporate name any property, including bonds, stocks, and securities of the United States of America, or any of the states, or of any corporation, board, or body, public or private, as may be necessary, proper, or convenient to the objects of the financial institution and to exercise in relation thereto all the direct and incidental rights of ownership. State financial institutions may lawfully purchase, acquire, hold, and convey, unless acting as trustee or agent, immovable property only in accordance with the provisions of this chapter."¹

A state-chartered financial institution may invest in a public welfare entity when the primary² purpose of the investment is to promote community welfare and simultaneously expand a financial institution's investment in market opportunities. Public investments are generally those that:

- Promote housing, economic revitalization or development in low-and moderate-income areas or target areas selected by federal, state or local government for redevelopment; or
- Directly benefit low- and moderate-income residents or small business.

(A) INVESTMENTS NOT REQUIRING PRIOR APPROVAL

A state-chartered financial institution may invest in a public welfare entity without the Commissioner's prior written approval if all the following conditions are met:

- (1) The investment is in a corporation, limited partnership, or other entity, and:
- (a) The entity primarily benefits low- and moderate income individuals, low- and moderate income areas, or other areas targeted by a governmental entity for redevelopment;

¹ Refer to LSA-R.S. 6:1136(A) and LSA-R.S. 6:822(6) for savings bank and savings and loan associations, respectively. Restrictions on ownership of real-estate or immoveable property is contained in LSA-R.S. 6:243.

² For this Policy, Primarily means greater than 50%.

(b) The entity is a Community Development Corporation pursuant to 42 USC 9802 or a Community Development Financial Institution pursuant to 12 USC 4702, or the project has been allocated to receive federal or state tax credits such as: New Market Tax Credits (NMTC), Low-income Housing Tax Credits (LIHTC), Historic Tax Credits (HTC) or would receive consideration as “qualified investments” under Office of the Comptroller of the Currency (OCC) 12 CFR 25.23, FDIC Rules and Regulations Part 345.23, or Federal Reserve 12 CFR 228.12³, and

(c) The entity/project, directly or indirectly, engages primarily in or makes loans primarily for the purposes of one or more of the following community development activities:

- (i) Investing in, developing, rehabilitating, managing, selling, or renting residential property if a majority of the units will be occupied by low- and moderate-income persons, or if the property is a “qualified low-income building” as defined in section 42(c)(2) of the Internal Revenue Code (26 U.S.C. 42(c)(2));
- (ii) Investing in, developing, rehabilitating, managing, selling, or renting nonresidential real property or other assets targeted towards low- and moderate-income persons;
- (iii) Investing in one or more small businesses to stimulate economic development in a low- or moderate income area or other areas targeted by a governmental entity for redevelopment;
- (iv) Investing in, developing, or otherwise assisting job training or placement facilities or programs that will be targeted towards low- and moderate-income persons;
- (v) Investing in an entity if the entity creates long-term employment opportunities, a majority of which (based on fulltime equivalent positions) will be held by low- and moderate-income persons;
- (vi) Providing technical assistance, credit counseling, research, and program development assistance to low- and moderate-income persons, small businesses, or nonprofit corporations to help achieve community development;
- (vii) Investing in an entity if the entity primarily benefits an area targeted by a government entity for redevelopment or revitalization; or

³ Regulations pertaining to activities to receive “consideration” under the Community Reinvestment Act.

(viii) Investing in an entity if the entity has a primary purpose of supporting job creation, education, health and social services, or community development that primarily revitalizes, stabilizes, assists, or helps to meet essential community needs to individuals or small businesses in low- or moderate income areas, designated disaster areas, or other targeted distressed, underserved or rural areas.

(2) The investment will not expose the financial institution to liability beyond the amount of the investment;

(3) The financial institution is at least well capitalized for purposes of prompt-corrective-action (PCA);

(4) The financial institution received a composite CAMELS rating of “1” or “2” under the Uniform Financial Institutions Rating System as of its most recent examination and an overall rating of “1” or “2” as of its most recent consumer compliance examination;

(5) The financial institution is not subject to any written agreement, cease-and-desist order, capital directive, PCA directive, or memorandum of understanding issued by this Office, or its primary federal financial institutions regulator; and

(6) The aggregate of all such investments (including commitments) does not exceed five percent of the sum of its tier 1 and tier 2 capital plus the ineligible balance of Allowance for Loan and Lease Losses as reported on the most recent Call Report.

(B) INVESTMENTS REQUIRING PRIOR APPROVAL

A state-chartered financial institution must obtain the prior written approval of the Commissioner to make any investment pursuant to this policy if the proposed investment does not satisfy all of the provisions of Section A above. Furthermore, if the proposed investment will cause the financial institution to exceed the aggregate investment limitation as defined in Section III(A)(6), in no event, may such investments (including commitments) exceed 10 percent of the sum of its tier 1 and tier 2 capital plus the ineligible balance of Allowance for Loan and Lease Losses as reported on the most recent Call Report.

Requests for prior approval under this paragraph shall include, at a minimum:

- The amount of the proposed investment;
- A description of the entity in which the investment is to be made;
- An explanation of why the investment is a public welfare investment;
- A description of the financial institution's potential liability under the proposed investment;
- The amount of the financial institution's aggregate outstanding public welfare investments;
- The dollar amount of each of the financial institution's capital accounts and its ALLL as reported on its most recent Call Report; and

- If the financial institution's investment is not eligible under Section III(A) of this policy, explain the reason or reasons why it is ineligible.

(C) EQUITY INVESTMENTS

While no rules or regulations have been issued by this Office on equity investments, there are certain cautions that must be considered. It shall be the policy of this Office that as long as the PWI continues to operate within the guidelines established by this policy, this Office will not object to the ownership of real estate within a PWI, which primarily benefits low- and moderate income individuals, low- and moderate income areas, or other areas targeted by a governmental entity for redevelopment. This ownership of immovable property by the PWI will not be considered a violation of the LBL as it relates to a particular state-chartered financial institution.

(D) REMEDIAL ACTION

If the Commissioner finds that an investment made pursuant to the policy is in violation of law or regulation, is inconsistent with the safe and sound operation of the financial institution, or does not satisfy the provisions of this policy, the financial institution shall take appropriate remedial action as determined by the Commissioner.

(E) DIVESTITURE OF INVESTMENTS

A financial institution may be required to divest itself of an investment made under this policy to the extent that the investment exceeds the scope of, or ceases to meet, the requirements of Section A above.

(F) EXCEPTIONS

Any exception to this Policy requires the prior written approval of the Commissioner.

John Ducrest,
Commissioner
Louisiana Office of Financial Institutions

Date